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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 445

AVCO CORPORATION,

Petitioner,

v.

AERO LODGE NO. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Petition For Certiorari Filed July 31, 1967

Certiorari Granted October 9, 1967

IN THE

Supreme Court of the United States

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APPENDIX

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE

AVCO CORPORATION,
vs.
AERO LODGE NO. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, et al.
} Civil No. 4272

APPEARANCES:

For the Complainant-Plaintiff:

William Waller, Esq.
Robert G. McCullough, Esq.
1200 American Trust Building
Nashville, Tennessee 37201

Don Banta, Esq.
105 West Adams Street
Chicago, Illinois 60603

For the Defendants:

Cecil D. Branstetter, Esq.
Carrol D. Kilgore
216 Third Avenue, North
Nashville, Tennessee

RELEVANT DOCKET ENTRIES

Date

11- 5-65 Petition for removal, removal bond, copies of pleadings and notices to Clerk and Master of

the Chancery Court for Davidson County, Tennessee and complainant's attorneys, filed.

11-12-65 Defendants' motion to dissolve temporary injunction and to dismiss filed.

11-18-65 Plaintiff's motion to remand filed.

2- 2-66 Defendants' motion to amend previous motion filed.

3- 2-66 Order of court entered denying plaintiff's motion to remand and defendants' motion to dismiss and sustaining defendants' motion to dissolve injunction.

3- 8-66 Plaintiff's motion for reconsideration with Exhibit A attached filed.

3-23-66 Order of court entered denying plaintiff's motion for reconsideration.

3-28-66 Notice of appeal from the orders entered March 2, 1966 and March 23, 1966 filed on behalf of plaintiff.

BILL OF COMPLAINT

(Filed October 15, 1965)

TO THE HONORABLE CHANCELLORS
HOLDING THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

* * (Rule No. 88288) * *

Avco Corporation,

Complainant,

vs.

Aero Lodge No. 735, International Association of Machinists and Aerospace Workers, James F. Enoch, a

resident of Davidson County, Tennessee, individually and as Business Representative of Aero Lodge No. 735, C.H. Keen, a resident of Davidson County, Tennessee, individually and as President of Aero Lodge No. 735, R. E. Dearmon, a resident of Rutherford County, Tennessee, individually and as Vice President of Aero Lodge No. 735, J.W. Underwood, a resident of Davidson County, Tennessee, individually and as Recording Secretary of Aero Lodge No. 735; C. W. Warren, T. F. Jolly and W. B. Buttrey, residents of Davidson County, Tennessee, and H. R. Murray, a resident of Wilson County, Tennessee, individually and as members of the Plant Grievance Committee of Aero Lodge No. 735; James E. Sharer, a resident of Davidson County, Tennessee, and William T. Dunn, a resident of Cheatham County, Tennessee, individually and as representatives of the class composed of all members of all committees of Aero Lodge No. 735; Michael T. Allen, James M. Baker, Culley E. Barnhill, Thomas M. Bratcher, David O. Briley, Mary M. Brown, William K. Brown, Richard G. Buckner, Johnnie P. Charlton, Kathleen Daingerfield and Floda M. Davis, residents of Davidson County, Tennessee, individually and as members of Aero Lodge No. 735; and as representatives of the class engaged in the activities alleged herein,

Defendants.

Complainant, Avco Corporation, respectfully shows to the Court as follows:

I

Avco Corporation is a Delaware corporation duly qualified to do business in Tennessee. Defendant, Aero Lodge No. 735, International Association of Machinists and Aerospace Workers (hereinafter referred to as the "Local") is an unincorporated association with its principal office at

1003 South First Street, Nashville, Tennessee. It is a "labor organization" within the meaning of 29 USCA §152(5), and is the exclusive bargaining agent of all production and maintenance employees of complainant at its manufacturing plant in Nashville, Tennessee. The residences and capacities in which they are sued of the other parties defendant are as stated in the caption.

II

(a) Complainant operates a manufacturing plant in Nashville, Tennessee, employing approximately 3,000 workers, of whom approximately 2,000 are represented by defendant Local. At said plant, complainant is engaged in the business of manufacturing and assembling major component parts for certain types of aircraft as more fully described hereinbelow. A major portion of complainant's business is the manufacture and assembly of component parts for two types of troop carrier aircraft, the C-141 and C-130, both of which are utilized for the transport of troops and cargo and are used extensively by the armed forces of the United States in the conflict in Viet Nam. The particular parts manufactured are the wing-box beam assembly for the C-141 aircraft and the vertical and horizontal stabilizers for the C-130 aircraft. All such work is done by complainant under contract with Lockheed-Georgia Company which is the prime contractor with the United States Government for the manufacture of such aircraft.

(b) At said plant, complainant is also engaged in the manufacture of cabin roof and boom assemblies for the Bell UH1D Helicopter which is also used extensively by the armed forces in the conflict in Viet Nam. Such work is done by complainant under contract with Bell Helicopter Company, which is the prime contractor with the

United States Government for the manufacture of such helicopters.

(c) At said plant, complainant is also engaged in the manufacture of landing gear doors for the Grumman A6A, a fighter aircraft used by the United States Navy extensively in the conflict in Viet Nam. Such assemblies are manufactured by complainant under contract with Grumman Aviation Engineering Corp. which is the prime contractor with the United States Government for the manufacture of such aircraft.

(d) Complainant avers that its activities at said plant in the manufacture of the component parts for the aircraft described above are vital to the national defense of the United States, because such aircraft are presently being used in Viet Nam and also because such aircraft constitute vital weaponry in the United States defense establishment.

III

Defendant is the sole collective bargaining agent for all the production and maintenance employees of complainant in its manufacturing plant in Nashville, Tennessee, engaged as aforesaid in the production of materials essential to the national defense. Complainant and defendant Local are parties to a collective bargaining argreement dated June 21, 1965, a copy of which is attached hereto marked Exhibit A, but which need not be copied in the issuance of process. Complainant and defendant Local agreed in Article IX of said contract as follows:

> "Grievances are herein defined as any alleged violations of the terms of this Agreement or any difference of opinion arising as to its interpretation or application. Should any grievance, as defined herein, arise,

there shall be no suspension of work and an earnest effort shall be made to settle such difficulties promptly in the matter hereinafter outlined."

Said Article IX then provides in explicit detail the manner and method in settling grievances, including a provision for binding arbitration, if necessary. Certain other provisions of said collective bargaining agreement may be pertinent to the allegations herein, and reference is made to said Exhibit A for a complete statement of said Agreement.

IV

Shortly after the effective date of said collective bargaining agreement, Exhibit A hereto, members of the defendant Local, despite the provision of such contract quoted above, and in violation thereof, began to engage in a series of slowdowns and work stoppages to the detriment of complainant. Complainant alleges that such violations of said collective bargaining agreement began on about July 29, 1965, when approximately ten employees in the department manufacturing the Grumman door assembly engaged in a work stoppage. On information and belief, this was because of their dissatisfaction with a reprimand given an employee, even though such dissatisfaction, if any, was under the Agreement a matter for the grievance and arbitration procedure. Thereafter on August 3, 1965, six employees working in the machine shop walked off the job. On information and belief, this was in protest of complainant's use of tests for determining the eligibility of employees for promotion. Thereafter, on or about August 11, 1965, approximately 50 employees walked off their jobs. On information and belief, this was in protest of complainant's termination of a probationary employee. On

August 12, 1965, numerous employees in the departments manufacturing the component parts for the C-141 and C-130 aircraft engaged in a work stoppage of approximately 20 minutes. On information and belief, this was in protest of the same alleged grievance which was the subject of the walk out on August 11. On October 7 and 11, a number of employees engaged in production of component parts for the Bell helicopter failed to report, and on October 12 walked off the job. On information and belief, this was in protest of a job classification dispute. On October 14, 1965, between the hours of approximately 12:30 and 3:00 P.M., approximately 100 employees working in the departments manufacturing component parts for the C-141 walked off their jobs. On information and belief, this was in protest of the presence of timestudy engineers in their work areas. At the time of the change of shifts at 4:00 P.M. on October 14, all or substantially all of said 100 employees massed at the gate and prevented, by persuasion, coercion, or otherwise, employees who were to begin their work at 4:00 P.M. from reporting to work. The series of work stoppages alleged as aforesaid culminated in a plant-wide strike of all or nearly all employees of complainant beginning at approximately 7:30 A.M. October 15, 1965. Complainant alleges that at 7:30 A.M. on October 15, a large group of employees were massed around the entrance and streets surrounding complainant's plant, obstructing and preventing by threat, coercion, or otherwise, employees reporting for work at 7:30 A.M. from entering complainant's premises. Complainant is not advised as to the exact number of employees so massed at said time but alleges on information and belief that approximately 800 employees were present. Each and every alleged grievance above

described should have been handled under the grievance procedure outlined in the collective bargaining agreement, and each suspension of work was in violation thereof.

V

Complainant alleges that officials of defendant Local, officers or committee men, were included in the groups of employees who engaged in said work stoppages as alleged hereinbefore on a majority of the occasions set forth above. Complainant alleges that in the walk outs on October 14 and October 15, officers, committee men and other officials of defendant Local were involved, and hence complainant alleges, on information and belief, that such work stoppages and strikes were sanctioned by defendant Local in violation of Article XIII of said collective bargaining agreement, which states: "During the life of this Agreement, no work stoppages, strikes or slow downs shall be caused or sanctioned by the Union and no lockouts shall be made by the Company." Complainant further alleges, on information and belief, that said work stoppages constituted concerted action on the part of defendants, and that complainant is entitled to an injunction against defendants and each of them, their members, associates, agents and confederates, from engaging or participating in or encouraging or persuading employees of complainant to engage in or participate in, during the term of said collective bargaining agreement, any suspension of work or any interruption of complainant's operations, and from acting individually, or in concert with others, to interfere with the normal conduct of complainant's business at its Nashville, Tennessee plant.

VI

THE PREMISES CONSIDERED, COMPLAINANT PRAYS:

1. That proper process issue and be served on the defendants, requiring them to appear and answer this bill at an early rule day, but not under oath, which is waived.

2. That a temporary injunction issue and be made permanent on the hearing enjoining the defendants and each of them, their members, associates, agents and confederates from engaging or participating in or encouraging or persuading employees of complainant to engage in or participate in, during the term of the collective bargaining agreement between complainant and defendant, Aero Lodge No. 735 of the International Association of Machinists and Aerospace Workers, effective June 21, 1965, and terminating June 20, 1968, any suspension of work or any interruption of complainant's operations, and from acting individually, or in concert with others, to interfere with the normal conduct of complainant's business at it plant at Nashville, Tennessee.

3. For general relief.

This is the first application for injunction in this cause.

Waller, Lansden & Dortch
By *Robert G. McCullough*
Solicitors for Complainant

We are surety for the costs of this cause not to exceed $250.

Waller, Lansden & Dortch
By *Robert G. McCullough*

STATE OF TENNESSEE }
COUNTY OF DAVIDSON } SS.

Byron L. Clark makes oath that he is Director of Industrial Relations of the complainant, Avco Corporation, that he has read the foregoing bill, and that the allegations thereof are true except those made on information and belief, and these he believes to be true.

/s/ *Byron L. Clark*

Subscribed and sworn to before me
this 15th day of October, 1965.

/s/ *Mary C. Parrish*
Notary Public

My commission expires: 7-26-67

FIAT

To the Clerk and Master:

File this bill, and upon the giving of a proper injunction bond in the amount of $10,000, issue the injunction prayed for therein.

This October 15, 1965.

/s/ *Alfred T. Adams*
Chancellor

PETITION FOR REMOVAL

[Caption Omitted]

(Filed November 5, 1965)

The petitioners, appearing for purposes of removal and for no other purpose, would show to the court:

1. Avco Corporation, a Delaware Corporation engaged in interstate commerce, filed a bill of complaint October 15, 1965, in the Chancery Court of Davidson County, Tennessee, against the defendants named in the caption of this petition, seeking temporary and permanent injunctions. A temporary injunction issued as prayed the same day. The case is docketed in that court as No. 88,288.

2. A copy of the original bill and a copy of the injunction are attached hereto.

3. The petitioners herein include all of the defendants named in the bill and subpoenas issued thereon.

4. The plaintiff is an employer whose employees are in an industry affecting interstate commerce, and whose activities affect interstate commerce.

5. The defendant, Aero Lodge No. 735, International Association of Machinists and Aerospace Workers, is a labor organization in which employees participate and which exists for purposes including dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work, and it is the exclusive bargaining agent of all production and

maintenance employees of the plaintiff's manufacturing plant in Nashville, Tennessee. A collective bargaining contract is currently in force between the defendant Lodge and the plaintiff covering such employees.

6. The bill alleges as the basis of action that the defendants have conducted concerted work stoppages in violation of the "no-strike" clause of the contract.

7. This action is therefore a suit for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Labor Management Relations Act § 301, 29 U.S.C. § 185, of which this court would have jurisdiction under that section without regard to the amount in controversy. It is also an action of a civil nature founded on a claim of right arising, if at all, under the laws of the United States, and may be removed to this court under the provisions of 28 U.S.C. § 1441(b) without regard to the citizenship of the parties.

8. This petition is filed within 20 days after defendants received copies of the bill and injunction, and it is accompanied by a bond with good and sufficient surety conditioned as required by 28 U.S.C. § 1446(d).

WHEREFORE, the petitioners pray that this case be removed to the United States District Court for the Middle District of Tennessee, Nashville Division.

/s/ *Cecil D. Branstetter*
Cecil D. Branstetter
Attorney for the Petitioners

[Affidavit and Bond Omitted].

MOTION

[Caption Omitted]

(Filed November 12, 1965)

Defendants move the Court to dissolve the temporary injunction issued in this case and to dismiss the case on the following grounds:

1. The complaint shows on its face that it involves and grows out of a labor dispute, that the temporary injunction sought and granted enjoins the acts enumerated in 29 U.S.C. § 104, or some of them, and because this Court is denied the power to issue and maintain such injunctions by the provisions of 29 U.S.C. § 101 and 104.

2. Because the complaint shows on its face that it involves and grows out of a labor dispute, because the temporary injunction issued enjoins acts described in U.S.C. § 104, and because the said temporary injunction, issued by a "Court of the United States" as defined by 29 U.S.C. § 113 (d) is illegal.

/s/ Cecil D. Branstetter
Attorney for Defendants

[Certificate of Service Omitted]

MOTION TO REMAND

[Caption Omitted]

(Filed November 18, 1965)

Avco Corporation, the complainant in the suit in the Chancery Court for Davidson County, Tennessee, Rule No. 88288, which has been removed to this Court, moves the Court for an order remanding the cause to said Chancery Court on the ground that the cause was improperly removed, and in support of this motion, respectfully shows as follows:

1. The suit is not, as alleged in the removal petition, founded on a claim arising under the laws of the United States, but instead is founded upon a claim of breach of contract arising under state law.

2. This Court, by virtue of 29 U.S. Code, sec. 104, has no jurisdiction of said suit.

Naphin, Sullivan & Banta
105 West Adams Street
Chicago, Illinois 60603

Waller, Lansden & Dortch
American Trust Building
Nashville, Tennessee 37201
By /s/ Robert G. McCullough
/s/ William Walker
Attorneys for Avco Corporation

[Certificate of Service Omitted]

MOTION TO AMEND PREVIOUS MOTION

[Caption Omitted]

(Filed February 2, 1966)

Come the defendants and respectfully move the Court to permit them to amend their motion to dissolve the temporary injunction and to dismiss the case previously filed in this cause by adding thereto, after Paragraph 2 thereof, the following:

> "In the event the Court determines not to dismiss the suit as previously asked in this motion, defendants respectfully move the Court to dissolve the injunction and dismiss the case or to stay further proceedings therein for failure of the plaintiff to pursue the remedy of arbitration for the alleged violation of the agreement, as provided for by Article IX of the Agreement attached to and incorporated in the original bill filed in the Davidson County Chancery Court (a copy of which agreement is also attached to and incorporated in this motion as Exhibit 'A')."

/s/ *Cecil D. Branstetter*
Cecil D. Branstetter
/s/ *Carrol D. Kilgore*
Carrol D. Kilgore
216 Third Avenue, North
Nashville, Tennessee

[Certificate of Service Omitted]

Portions, Collective Bargaining Agreement (Exhibit A to Defendants' Motion to Amend Their Motion to Dissolve the Injunction).

ARTICLE IX.

Section 1.

Grievances are herewith defined as any alleged violation of the terms of this Agreement or any difference of opinion

arising as to its interpretation or application. Should any grievance, as defined herein, arise there shall be no suspension of work and an earnest effort shall be made to settle difficulties promptly in the manner hereinafter outlined.

Step 1.

* * * * * * * *

Step 2.

* * * * * * * *

Written grievances relating to matters general in character may be submitted by the Union to the office of the Director of Industrial Relations not later than forty-eight (48) hours prior to the date of the next scheduled meeting. The Company may originate a grievance against the Union for discussion in such meeting and in such cases it shall advise the Union of the nature of the grievance forty-eight (48) hours prior to the date of the scheduled meeting. The Union will submit its answer to the Company's grievance within five (5) working days following the date of the meeting.

Step 3.

(a) Either party may refer a grievance to arbitration within five (5) working days after a written answer is received in Step 2, above, by notifying the other party that it desires the grievance to be arbitrated. The party referring the grievance to arbitration shall, within five (5) additional working days, request the Director of the Federal Mediation and Conciliation Service to appoint an arbitrator in accordance with the procedures set forth in Paragraph B, below.

* * * * * * * *

ORDER

[Caption Omitted]

(Entered March 2, 1966)

This action was instituted in the Chancery Court for Davidson County, Tennessee, and subsequently removed by the defendant to this court. The plaintiff has filed a motion to remand.

According to the complaint, the plaintiff Avco Corporation is a manufacturer of aero-space equipment and is engaged in interstate commerce. The defendant Aero Lodge No. 735, International Association of Machinists and Aero Space Workers (hereinafter referred to as "Aero Lodge") is an unincorporated labor organization and the exclusive bargaining agent of all production and maintenance employees at the plaintiff's Nashville plant. Plaintiff and defendant entered into a collective bargaining agreement June 21, 1965, containing a no-strike clause and providing that an explicit procedure, including binding arbitration, be followed to resolve grievances. Shortly after the agreement became effective, a labor dispute arose and members of Aero Lodge began to engage in a series of slowdowns and work stoppages culminating in a plant-wide strike. The complaint contains prayers for an injunction against work stoppages during the period of the collective bargaining agreement and for "general relief."

The removal statute, 28 U.S.C. § 1441, authorizes removal of an "action of which the district courts have original jurisdiction founded on a claim or right arising under the . . . laws of the United States. . . .". Avco Corporation asserts that this case does not come within the scope of this removal authorization because its claim does not arise under the laws of the United States and because Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, withdraws jurisdiction from this court to grant the injunctive relief sought in the complaint.

Although the Court of Appeals for the Third Circuit recently held otherwise,[1] this court is persuaded that all claims founded upon collective bargaining agreements in industries affecting interstate commerce arise under federal law. In *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448 (1957), the Supreme Court held that Section 301 of the Taft-Hartley Act commissions the federal courts to fashion a body of federal substantive law to be applied in enforcing collective bargaining contracts. The Court reasoned that state law might provide illumination in the search for the best means to effectuate the federal policy, but said, at page 457, that "[a]ny state law applied . . . will be absorbed as federal law and will not be an independent source of private rights." In *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95 (1962), the Court applied the doctrine of *Lincoln Mills* to state courts exercising concurrent jurisdiction in actions founded on col-

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[1] *American Dredging Co.* v. *Local 25, Marine Division, Int'l Union of Operating Eng'rs,* 338 F.2d 837 (3rd Cir. 1964), cert. denied, 380 U.S. 935 (1965). An excellent analysis of the decision appears in Note, 78 Harv. L. Rev. 1665 (1965).

lective bargaining agreements, and held that the state courts, like their federal counterparts, must use the federal substantive law developed under the implied mandate of Section 301. Thus, according to the doctrine of *Lincoln Mills* as expanded in *Lucas Flour Co.*, all rights and claims resulting from a collective bargaining agreement in an industry affecting interstate commerce arise under federal law; state law does not exist as an independent source of private rights in regard to collective bargaining contracts.

The plaintiff's second contention—that this court lacks jurisdiction because the complaint seeks injunctive relief—is likewise unsound. The Norris-LaGuardia Act withdraws jurisdiction from the federal courts to enjoin a peaceful strike growing out of a labor dispute,[2] even when the strike violates the terms of a collective bargaining contract. *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962). But the mere fact that a prohibited labor injunction is among the remedies sought does not mean that a district court lacks original jurisdiction over the cause of action for the purpose of awarding other relief. Thus, in *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238 (1962), the inclusion in the complaint of a prayer for a prohibited labor injunction, together with a prayer for damages, did not prevent the Supreme Court from remanding the case to the district court for the purpose of determining whether

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[2] Section 4 of the Norris-LaGuardia Act provides:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute * * *."

damages should be awarded.[3] It is clear on the authority of *Atkinson,* therefore, that a prayer for a prohibited injunction does not preclude a district court from exercising original jurisdiction, at least if non-injunctive relief is also sought.

In addition to the prayer for an injunction, the complaint herein contains a prayer for general relief. The effect of a similar general relief prayer was considered by the Supreme Court in the early case of *Watts* v. *Waddle,* 31 U.S. 389 (1832). The complaint in that case prayed for specific performance of the defendants' contract to purchase land, and in addition, for general relief. The Court held that, although the complainants were not entitled to the specific relief requested, the allegations in the complaint that the defendants had been in possession of the land involved in the controversy entitled the complainants to recover rents and profits under the prayer for general

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[3] The complaint in *Atkinson* contained three counts. Count I stated a cause of action for violation of a collective bargaining contract and prayed for damages from the union. Count II purported to invoke diversity jurisdiction and sought damages from individual members of the union. Count III stated the same cause of action as Count I but sought injunctive relief. Counts I and II were considered by the Court in *Atkinson* v. *Sinclair Refining Co.* and Count III was considered in *Sinclair Refining Co.* v. *Atkinson.* Lest it be thought that Count I and Count III stated separate causes of action so that *Atkinson* would not be controlling in this case, it should be noted that both counts were founded on the same alleged wrong, and a single wrong gives rise only to a single cause of action regardless of the fact that the complaint is fractured into multiple counts.

relief.[4] Likewise, the allegation of the complaint herein that the defendant breached its contract to submit grievances to arbitration and to refrain from striking provides a sufficient basis under the general relief prayer for awarding damages and, perhaps, for compelling specific performance of the arbitration provision.

Moreover, this case would be controlled by *Atkinson* even if the complaint did not contain the general relief prayer. Rule 53(c), Federal Rules of Civil Procedure, provides that "every final judgment shall grant the relief to which the party is entitled, even if the party has not

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[4] The Court stated:

"A new ground of relief has been assumed in the argument here that was not made in the Circuit Court, which is, that although this court should be of the opinion that a specific execution of the contract ought not to be decreed, still the complainants are entitled to a decree for the rents and profits of the land while it was in the possession of the defendants.

The defendants object to this relief, first, because the bill is not so framed as to embrace it * * *.

" * * * * *

"Although there is no specific prayer in the bill to be paid the rents and profits, yet the court thinks that, under the general prayer, this relief may be granted. Under this prayer, any relief may be given for which the basis is laid in the bill. In this case the possession of the land by the defendants is alleged, and the demand for rents and profits would result from this fact.

" * * * * *

"That part of the decree of the Circuit Court which refused a specific execution of the contract is affirmed; but in order to afford relief for the rents and profits, the decree dismissing the bill is opened and the cause remanded for further proceedings." (31 U.S. 389, at 402, 403)

demanded such relief in his pleadings." Thus, a prayer for an injunction constructively acts as a prayer for all appropriate relief.[5] See *Publishers Ass'n of N.Y. City* v. *New York City Newspaper P.P.U.*, 246 F.Supp. 293 (1965).

Upon consideration, therefore, the court is of the opinion that the plaintiff's claim arises under the laws of the United States and that the complaint states an "action of which the district courts have original jurisdiction." Accordingly, it is Ordered that the motion to remand be, and it hereby is, denied.

There remain to be considered defendants' motions to dissolve the injunction heretofore issued and to dismiss the action. On the basis of the court's reasoning and the authorities cited in connection with the motion to remand, the court is of the opinion that the motion to dissolve the injunction is well taken and that the motion to dismiss the action is not well taken.

Accordingly, it is Ordered that the motion to dismiss the action is denied, and it is further Ordered that the injunction heretofore issued be, and it hereby is, dissolved.

/s/ *Frank Gray, Jr.*
Frank Gray, Jr.
United States District Judge

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[5] While the Federal Rules of Civil Procedure do not expand the court's jurisdiction, they are determinative of the scope of relief which the court can award under a particular prayer.

MOTION FOR RECONSIDERATION

[Caption Omitted]

(Filed March 8, 1966)

Complainant, Avco Corporation, moves the Court to reconsider its order entered in this cause on March 2, 1966, on the following grounds: In acting on the second ground of the motion to remand, which involves a determination of the scope of permissible relief under the bill of complaint filed in the Tennessee Chancery Court, the Court should not assume its own jurisdiction in advance (the very point at issue) by applying federal procedure law in determining such scope, but should apply Tennessee law, under which no relief other than injunctive relief could be granted, notwithstanding the prayer for general relief. (See *Mengle Box Company* v. *Lauderdale County,* 144 Tenn. 266, and certified copy of the bill of complaint in said case, annexed hereto as Exhibit A). The complainant has, on brief and in oral argument, disclaimed (and now disclaims) reliance on federal law, either substantive or procedural.

Respectfully submitted,

Waller, Lansden & Dortch
American Trust Building
Nashville, Tennessee 37201

Naphin, Sullivan & Banta
105 West Adams Street
Chicago, Illinois 60603
By */s/William Waller*
/s/ Robert G. McCullough
Attorneys for Avco Corporation

[Certificate of Service Omitted]

EXHIBIT "A" TO MOTION FOR RECONSIDERATION

[Caption Omitted]

This is to certify that, I, Walter L. Jordan, am the Director of Archives for the State of Tennessee, and that as a regular part of my job, I keep the records filed in the Supreme Court of Tennessee. I further certify that attached hereto is a true and correct copy of the original Bill of Complaint filed in the Chancery Court at Ripley in and for Lauderdale County, Tennessee and that said Bill constituted a part of the record filed in the Supreme Court of Tennessee in the case Style Mengle Box Company v. Lauderdale County, 141 Tennessee 373.

Witness by my hand this 21st day of January, 1966.

/s/ *Walter L. Jordan*
Walter L. Jordan
Director of Archives
State of Tennessee

Sworn to and subscribed before me this 21st day of January, 1966.

/s/ *Adine Hurt, Notary Public*
My Commission expires: 7-22-67

TO THE HONORABLE V. H. HOLMES, CHANCELLOR ETC. PRESIDING AND HOLDING THE CHANCERY COURT AT RIPLEY IN AND FOR LAUDERDALE COUNTY TENNESSEE.

The Mengel Box Company, a corporation incorporated under the laws of New Jersey, but which has complied

with the Private Corporation Laws of the State of Tennessee and is legally doing business in the State of Tennessee, being engaged in the timber and lumber business and having a place of business in Lauderdale County, Tenn. COMPLAINANT.

vs.

The County of Lauderdale and W. C. Patton, Judge of the County Court of Lauderdale County, Tenn., who is its financial agent, W. G. Denny, N. W. Barbour, and C. W. Patton, Special Commissioners, all citizens and residents of Lauderdale County, Tennessee; and the Larimer & Burgett Bridge Company, a corporation incorporated under the laws of the State of Tennessee and having its principal place of business in Memphis, Shelby County, Tenn., but which has an agent now engaged in the bridge business in Lauderdale County, Tenn.

DEFENDANTS.

Your Complainant respectfully show unto Your Honor:

That it is the owner of a tract of 8760 acres of land, situated in the 9th civil district of Lauderdale County, Tenn., conveyed to it by the Anderson-Tully Company in 1916 and the same is bounded and described as follows:

> BEGINNING at the southeast corner of the tract of land heretofore conveyed by C. G. Bond and wife to the St. Louis Wooden Ware Works in the center of the old channel of the Forked Deer River; thence up the meanders of the said river in the center of the same, running out of said river at a point on the bank of the same West of the foot of Chisholm Lake three small cypress, one cypress marked XM; thence up the west bank of the said lake North 318 poles to a honey locust marked G and 318 poles at the west edge of said lake; thence in a northwesterly direction to the West

end of the West arm of said lake; thence around said arm and then with the north side of said arm East to a point in the center of the old channel of the Forked Deer River; thence up the center of said river with its meanders to a point on the West bank of said river, Henning's southwest corner, a black oak with red oak and two ash and two hackberry pointers; thence with Henning's line on the West side of the river in a northern direction to Henning's northwest corner a large cottonwood, ash and maple pointers; thence East with Henning's line 262 poles to the center of said river; thence up the center of said river to the cutoff; and up the center of the said cutoff to a point directly east of Rucker's northeast corner; thence west 150 poles to Ruckers northeast corner; thence South 100 poles along Ruckers east line to another corner of his; thence West 20 poles to another pointer; thence south 27 poles to his southeast corner; thence West with Rucker's south line 200 poles to Anderson's east line; thence south 125 poles to a point in Anderson's south line to a large sweetgum marked TW with a hole in the said gum at the ground on the north side and west of wood lake; thence west 478 poles to Pierson's northeast corner in Anderson's south line; thence south 326 poles to Pierson's southeast corner; thence West 151 poles to Pierson's southwest corner; thence south along the west line of Grant 11004 and 11000, 1746 poles to the BEGINNING. Being all of Grant 11004 and Grant 11000 except that part sold to Pierson, and part of Grant 11001, and the land conveyed to C. G. Bond by J. C. Marly Oct. 29, 1889, that being part of grants 11000 and 11003. And being the same tract of land conveyed by C. G. Bond and wife to Theodore and W. B. Tamm by deed of record in Deed Book Z at pages 201 et seq. and page 238-9 of the Register's Office at Ripley, Tenn.

Your complainant further shows that this land is in the Mississippi Bottom and lies north and west of the Forked Deer River and is now principally valuable for the merchantable timber on the same, but it is good farming land when cleared up and most of it is susceptible of cultivation. A great deal of land down in that section of the bottom especially west of this tract around Hales Point and Bar on the Mississippi River have already been cleared and are in cultivation and a great many people live down in that section of the country and farm said land. The principal railroad town and the one most accessible to these people and lands and especially the land of complainant is Ripley, Tenn., the county seat of Lauderdale County. For at least sixty or seventy years there has been a public road from the town of Ripley through the town of Arp and down across what is known as the Divide (being where the Forked Deer River forks, one prong running on South and the other running in a western direction and emptying into the Mississippi River) said road runs on down the north bank of this prong running West for about two miles and a half and forks there, one prong running on West to the town of Bar on the Mississippi river and the other running north or northwest to the town of Hales Point on the Mississippi, at the mouth of the Obion River. This public road is the only road for getting in and out from these two settlements on the Mississippi River and from complainant's land out to Ripley and the Illinois Central Railroad, and the same has been kept up and maintained by the county of Lauderdale and used as a public road by all people travelling in and out of that section of the country for at least sixty years. Several years ago the County of Lauderdale erected a steel bridge, something like two

hundred feet long across Forked Deer River at the Divide and just immediately north of where the River forks and where said road crossed said river, and since that time this bridge has been a part of said public road and has been in use by the public generally. Something like one-quarter of a mile west of this iron bridge Lauderdale County erected, several years ago, another iron bridge across a slough running from the north and emptying into Forked Deer River, which is called and known as the Wash Out in that section of the country, and this bridge was used by the travelling public as a part of said public road along the north bank of Forked Deer River until something like a year ago when one of the piers of the same was undermined by water and part of the bridge fell down and is now down in the bed of said slough, this falling down being due to the improper way of the construction of the said bridge by the defendant, the Larimer and Burgett Bridge Company. This bridge can be repaired and constructed so that it will be a permanent one and afford substantial and ample passage for the travelling public using that road over said slough at a cost of from $250.00 to $500.00, and when so repaired this public road will be best and most practicable route or location and the nearest route for the people living in that section of the country to and from the county seat at Ripley, Tenn. There is quite a large section of the country lying North and West of this Forked Deer River which this public road accommodates, being one of the civil districts, the 9th civil district of Lauderdale County, Tenn.

Your complainant shows further that at the July Term 1920 of the County Court of Lauderdale County, Tenn., the Quarterly Court of said County passed a resolution which

abandoned this public road from the South bank of Forked Deer River where the bridge now crosses it, from thence on across said River and down the north bank of the same for a distance of about two miles and a half, being about one-half a mile west of the West line of Your Complainant's tract of land, and ordered the said bridge which is now across said Forked Deer River to be taken down and moved and put across the south prong of the river a short distance south of the Divide and ordered the bridge which has fallen at the Wash Out to be removed and put across said River at a point two miles and a half or thereabout west of the Divide and where the public road now forks, one prong running to the Bar and the other to Hales Point; and ordered a new public road opened up along the south bank of the said river, so that instead of the present road crossing the river north of the Divide where the bridge now is it would cross the south prong of the river a short distance south of the Divide and run along the South bank of the said River and across the same North again where the road now forks going to the Bar and Hales Point. Your complainant shows unto Your Honor that it had no notice whatever that this change would be made or attempted by the said Quarterly Court and no notice was given to any of the other owners of land North and West of this Forked Deer River, especially the north prong of the same, but this action by the Quarterly Court was solicited and induced by parties who cared nothing for injuring and damaging the lands and property of your complainant and others living north and west of said Forked Deer River, but who had for their purpose the opening up of a public road at the place proposed in order that they might increase the value to their own lands lying between these two prongs of the river and make the same more accessible for travel to and from the same.

These people, or many of them directly interested in opening up this new road have a way of ingress and egress from the Ashport and Ripley public road north to their land by what is called the Falls. At any rate they should not want and should not be permitted to damage the lands of the complainant north and west of said Forked Deer River by removing this road and bridge in order to further their own selfish interest and increase the value of their lands.

Your complainant shows further that this bridge across the River where the public road now crosses north of the Divide is the only way of ingress and egress which it has to its lands from the County Seat or any other place in Lauderdale County Tenn., except a road many miles north thereof which runs out into the north end of Lauderdale County, but this road does not enter the tract of land of complainant described above. Complainant shows that if the County of Lauderdale or the defendants are permitted to take away the steel bridge where it now crosses said river north of the Divide and abandon said public road and move the bridge to the proposed point on the South Fork of said river and open up said road along the south bank of the same, that it will work an irreparable injury to your complainant and its land because it is not possible to cross said river without a bridge except to ford it at very low water which is dangerous and which cannot be done with vehicles or teams to any advantage. Complainant shows further that the public road now along the North banks of said river is in fairly good shape and can be put in first class shape and the bridge across the washout reconstructed at much less cost than to open up the road along the south bank of the said river and to

tear down and remove said bridges to the places proposed, and by doing so Lauderdale County and the taxpayers thereof will be saved anywhere from five to seven thousand dollars. Complainant shows further that the land along the north bank of said Forked Deer River lies better and is better suited for the public road to be on that side of the River than the land on the south side of the River, which does not lie so favorably for a road.

Complainant shows further that pursuant to said order of the Quarterly Court at its July Term 1920, the defendant W. C. Patton, County Judge of Lauderdale County, Tenn., who is its financial agent, appointed the defendant W. G. Dennie, N. W. Barbour, and C. W. Patton, as Special Commissioners, to have said bridges removed and rebuilt at the places proposed and to open up the said public road along the south bank of said River. These said Commissioners, with the approval of the said County Judge, have entered into a contract right recently with the defendant, the Larimer and Burgett Bridge Company, to take down and remove the said bridges and to rebuild them at the places proposed, and the said defendant, the Larimer and Burgett Bridge Company, has already begun work under said contract and are now engaged in constructing a temporary wooden bridge across said river north of the Divide for the use of the travelling public at the point where the steel bridge now is, preparatory to moving said steel bridge and constructing it across the south fork of the river, and are preparing to take down the bridge across the washout and move it down the river two miles and a half to the forks of the road where it is proposed to construct it across the said north prong of said Forked Deer River, and unless said Bridge Company and the other

defendants are enjoined from so doing they will carry out their said purpose to remove said bridges and abandon said road and thus work an irreparable injury to your complainant and other land owners north and west of Forked Deer River and thus entail an enormous amount of expense on the taxpayers of Lauderdale County, Tenn., to carry out the said proposed work.

Your complainant shows further that they file this bill on behalf of themselves as landowners of Lauderdale County, Tenn., and other landowners north and west of said river and on behalf of themselves as taxpayers of Lauderdale County, Tenn., and the other taxpayers of Lauderdale County, Tenn. They show and state and charge that the action of the Quarterly Court in ordering said road closed up and said bridges moved was without authority of law, the said Quarterly Court having no power to open or close especially without notice to the parties interested and affected thereby, and such Quarterly Court was so notified at the time it took said action, but proceeded any way without authority of law, and in derogation of the rights of your complainant and other landowners and taxpayers of Lauderdale County, Tenn.

Complainant shows further that the County of Lauderdale has a Special Road Law passed March 25, 1919, which controls the opening, laying out, closing and working of public roads in Lauderdale County, Tenn., and this law provides as follows:

> "That all applications for opening, changing, restoring or widening of public roads in the Counties coming under the provisions of this Act, shall be done on the petition of the District Road Commissioner of the District in which said road lies, or upon the petition of any citizen or taxpayer of the county, and said

petition shall be to the County Judge of the County and ten days notice of the filing of said petition, shall be given to all land owners, over whose land said proposed road will be run."

This law provides further that any party affected by said petition may have the right to appear and make defense and may have the County Judge of Lauderdale County to assess any damages which may be sustained by said action against the county to be paid out of the district highway funds in which said road lies, and it provides for the payment of costs etc.

Your complainant, by the summary action of the said Quarterly Court, has been deprived of all right of defense against said proposed changes and of all right to have any damages to which it may be entitled assessed against said district highway fund, and in fact by said action it has been stripped of all of its legal rights and subjected to irreparable damages in order that other designing parties may be benefited thereby and have the value of their lands increased. And your complainant is informed and charges that it has no other remedy except to come into Your Honor's Court on behalf of itself and all other land owners and taxpayers in that section of the country and to have the defendants enjoined from proceeding to carry out said changes and to have said resolution and order of the said Quarterly Court declared void and inoperative. A map of the section of country, showing complainant's land and the location at present of said bridges and road and the proposed changes, is herewith filed as Exhibit "A" to and made a part of this bill, but the same need not be copied unless called for. Your Complainant is engaged in Lauderdale County, Tenn., in cutting, hauling, and removing timber from this and other lands which it owns in Lauderdale County and in doing so is operating quite an ex-

tensive camp and railroad or log road across this and its other land in Lauderdale County to the Mississippi River.

The PREMISES CONSIDERED, Your Complainant prays:

That copy and process issue and be served on the defendants requiring them and each of them to appear and answer this bill, but the oath to their answer is waived; that it be allowed to file this bill on behalf of itself and all other landowners in that section of the country (who are too numerous to set out here by name) affected by said change and damaged thereby, and all other taxpayers of Lauderdale County, Tennessee; that an injunction issue upon the fiat of Your Honor restraining each and all of the defendants from proceeding further or taking any other step towards making the changes ordered by said resolution of the Quarterly Court and particularly from abandoning said public road or taking down the said bridge across the Forked Deer River north of the Divide where it now is or from taking down that part of the bridge across the Wash Out which is now standing and to which repairs may be made on said bridge, but it does not desire to enjoin any of them from repairing or rebuilding the said bridge across the washout or taking any steps towards repairing or rebuilding of the same so as to make the same useful for the traveling public along said public road; it prays further for an injunction against the County Judge the Financial agent of said County, paying out any of the funds of the county for any work already done or hereafter to be done on said proposed changes, except to pay for any work in removing any and all parts of the bridge across the washout or doing any other work on the same advisable or useful in repairing the same: that the resolution of the Quarterly Court above referred to declared

void and inoperative and ineffective to authorize the proposed changes in said road and bridges; complainant prays for all such other, further and general relief as the nature of the case may require and to Equity doth belong.

This is the first application for writ of injunction in this cause.

Craig, Bullock and Durham
Solicitors for Complainant.

State of Tennessee
Lauderdale County.

A. P. Thurman being duly sworn makes oath that he is agent of and general manager of the Complainant, the Mengel Company, being its General Superintendent in Lauderdale County, Tenn. and that the facts and statements made in the foregoing bill are known to him, and those made therein of his own knowledge are true and those made on information and belief, he believes to be true.

A. P. Thurman

Sworn to and subscribed before me this August 29, 1920.

A. O. Durham,
Clerk and Master.

To the Clerk and Master of the Chancery Court at Ripley, Tenn.:

File this bill and issue the writ of injunction prayed for in said bill on the Complainant giving an injunction bond as required by law in the sum of five hundred dollars.

Jno. Y. Peete
County Judge of Tipton
County, Tenn.

Endorsed:—
Filed August 30, 1920.

A. O. Durham, C and M.

ORDER

[Caption Omitted]
(Entered March 23, 1966)

Plaintiff's motion for re-consideration of the order of March 2, 1966, denying remand of this case to the State court from which it was removed, was heard by the court March 17, 1966.

At the hearing, counsel for plaintiff contended that, for the purpose of determining its jurisdiction herein, the court must construe the complaint and the prayers thereof as they would be construed by the Tennessee court in which the case was instituted. He further contended that, under such construction, the only relief which could have been granted by the Tennessee court would have been the specific injunctive relief prayed for, an injunctive relief which this court has no jurisdiction to grant because of Section 4 of the Norris-LaGuardia Act.

The court was of the opinion, however, that even if the court, to determine its jurisdiction, were required to construe the complaint and its prayers according to Tennessee law, the same conclusion would be reached as that embodied in the order complained of. Under Tennessee law, a complainant who has prayed for general relief is entitled to any relief appropriate to the pleadings and proof, whether or not he has specifically prayed for such relief. *Holston National Bank* v. *Wood,* 125 Tenn. 6; *Rhodes* v. *Johnson,* 32 Tenn. App. 127, 222 S.W.2d 38; *Gibson's Suits in Chancery,* 5th Ed., § 159. The only exception to this rule is that relief so inconsistent with the special prayer as to take a defendant by surprise cannot be granted. *Allum* v. *Stockbridge,* 67 Tenn. 356.

It will be noted that Tennessee law on this question of what relief can be obtained under the prayer for general relief is similar to the federal law as expressed in *Watts* v. *Waddle,* 31 U.S. 389.

Accordingly, the motion for re-consideration was denied.

/s/ *Frank Gray Jr.*
United States District Judge

NOTICE OF APPEAL

[Caption Omitted]

(Filed March 28, 1966)

Notice is hereby given that Avco Corporation, the complainant in the above named suit, removed by the defendants from the Chancery Court for Davidson County, Tennessee, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the orders entered herein on March 2, 1966 and March 23, 1966, respectively.

Dated March 25, 1966.

Waller, Lansden & Dortch
American Trust Building
Nashville, Tennessee 37201

Naphin, Sullivan & Banta
105 West Adams Street
Chicago, Illinois 60603
By /s/ *Robert G. McCullough*
/s/ *William Waller*
Attorneys for
Avco Corporation

OPINION AND JUDGMENT OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

NO. 17207

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

AVCO CORPORATION,
Plaintiff-Appellant,
v.
AERO LODGE No. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ET AL.,
Defendants-Appellees.

APPEAL from the United States District Court for the Middle District of Tennessee, Nashville Division.

Decided May 2, 1967.

Before: EDWARDS and CELEBREZZE, Circuit Judges and BATTISTI*, District Judge.

CELEBREZZE, Circuit Judge. The question presented on this appeal is whether an action seeking to enjoin a breach of a no-strike provision in a collective bargaining agreement may be removed from State to Federal Court.

Avco Corporation (Avco) is a Delaware Corporation, qualified to do business in Tennessee. Avco is engaged in

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* Honorable Frank J. Battisti, United States District Judge, Northern District of Ohio, Eastern Division, sitting by designation.

interstate commerce, and its Tennessee manufacturing and assembly plant doing a substantial amount of aircraft structures work has a direct impact on the national defense. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers, (Union) is the sole collective bargaining agent for approximately 2,000 production and maintenance employees of Avco's manufacturing plant in Nashville, Tennessee.

A series of work stoppages at the Nashville plant culminated in a plant-wide strike on October 15, 1965. The collective bargaining agreement then in force provided that there would be no work stoppage or strikes, and the bargaining contract further provided for a method of settling grievances, including a provision for binding arbitration.

Avco instituted suit in the Chancery Court for Davidson County, Tennessee, seeking to enjoin the Union from striking, and asking also for general relief. The complaint did not involve any allegation of violence in connection with the strike, and hence no foundation for the employment of state injunctive power under the police power doctrine. After the Chancery Court issued a temporary injunction the Union filed a petition for removal of the cause to the United States District Court. Upon removal, the Union filed a motion to dissolve the temporary injunction, and to dismiss the action upon the alleged ground that the complaint sought, and Avco had been granted, an injunction which the District Court had no power to issue or maintain by reason of the restrictions of the Norris-La Guardia Act. Avco moved to remand the action to the State Court upon the ground that the complaint was not founded on a claim arising under the laws of the United States within the meaning of the Removal Act, but instead was founded

upon breach of contract arising under State law. Avco further maintained that the District Court, by virtue of the Norris-La Guardia Act, did not have original jurisdiction within the meaning of the Removal Act. The District Court dissolved the temporary injunction, but refused to dismiss the action. The motion to remand was denied. Avco appeals.

The question presented here is identical to the question presented in *American Dredging Co.* v. *Local 25, Marine Division, International Union of Operating Engineers,* 338 F.2d 837 (C.A. 3, 1964), cert. den. 380 U.S. 935 (1965). In *American Dredging, supra,* the Court remanded the case to the State Court on the ground that the action, based solely on a State created right, did not come within 28 U.S.C., Section 1441, which permits removal of a civil action to a Federal Court which has jurisdiction under a law of the United States. We decline to follow *American Dredging,* and affirm the judgment of the District Court.

This action was removed to Federal Court pursuant to the provisions of 28 U.S.C., Section 1441(b) which provides, in part:

> "(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties."

Avco maintains that this case does not come within the scope of this removal authorization because its claim does not arise under the laws of the United States and further that Section 4 of the Norris-LaGuardia Act, 29 U.S.C., Section 104, withdraws jurisdiction from Federal Courts to grant the injunctive relief sought in the complaint.

We cannot accept the basic premise of Avco's argument that its action is based solely upon a State created right. Section 301 of the Labor Management Relations Act, 29 U.S.C., Section 185,[1] confers jurisdiction upon the District Court without regard to diversity of citizenship or jurisdictional amount to enforce collective bargaining agreements in industries affecting interstate commerce. *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448 (1957), held that Federal substantive law preemptively applies in suits under Section 301, the Court stating:

> "The question then is, what is the substantive law to be applied in suits under Section 301(a)? We conclude that the substantive law to apply in suits under Section 301 (a) is federal law, which the courts must fashion from the policy of our national laws. * * *
>
> "Federal interpretation of the Federal law will govern, not State law. Cf. Jerome v. United States, 318 U.S. 101, 194. But State law if compatible with the purpose of Section 301, may be resorted to in order to find the rule that will best effectuate the Federal policy (Citations omitted). Any State law applied, however, will be absorbed as Federal law and will not be an independent source of private rights."

This enunciated principle was reaffirmed in *Teamsters, Local 174* v. *Lucas Flour Co.,* 369 U.S. 95 (1962), p. 103:

> "The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be

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[1] 29 U.S.C.A., Section 185(a)—Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

> paramount in the area covered by the statute. Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of Lincoln Mills, requiring issues raised in suits of a kind covered by § 301(a) to be decided according to the precepts of federal labor policy."

Thus, according to the findings of the Supreme Court, as enunciated in *Lincoln Mills, supra,* and expanded in *Lucas Flour Co., supra,* all rights and claims arising from a collective bargaining agreement in an industry affecting interstate commerce arise under Federal law. State law does not exist as an independent source of private rights to enforce collective bargaining contracts. While State courts may have concurrent jurisdiction, they are bound to apply Federal law. *Charles Dowd Box Company* v. *Courtney,* 368 U.S. 502 (1962). The force of Federal preemption in this area of labor law cannot be avoided by failing to mention Section 301 in the complaint.

In view of the express finding in *Lucas Flour, supra,* Avco's contention that its action is founded upon a breach of contract arising under State law is without merit. The action is based upon a violation of a no-strike agreement arising out of a collective bargaining agreement in an industry affecting interstate commerce. Had the action remained in the State Court, the State Court, under the doctrine of *Lincoln Mills* and *Lucas Flour,* was bound to apply Federal and not State law.

Finding that Avco's claim is one arising under the laws of the United States, we next consider whether Section 4 of the Norris-LaGuardia Act, 29 U.S.C.A., Section 104, withdrew jurisdiction from Federal Courts.

> "Section 4 of the Norris-LaGuardia Act provides, in part:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such disputes (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> "(A) Ceasing or refusing to perform any work or to remain in any relation of employment: * * *."

We do not think "jurisdiction" has the same meaning in Section 4 of the Norris-LaGuardia Act as it does in Section 301 of the Labor Management Relations Act. The Norris-La Guardia Act does not deny to Federal Courts jurisdiction over the parties or the subject matter. The Federal Courts are denied the power to grant injunctive relief under the provision of Section 4 of the Act, and permitted to grant injunctive relief under the provision of Section 7 of the Act. The Norris-La Guardia Act does not limit the power of the Court to entertain the suit. As stated by the District Court, "the mere fact that a prohibited labor injunction is among the remedies sought does not mean that a District Court lacks original jurisdiction over the cause of action for the purposes of awarding other relief."

The loss of the power to grant certain equitable remedies does not mean Federal Courts have lost jurisdiction over the subject matter or parties.

In *Pusey and Jones Co.* v. *Hanssen*, 261 U.S. 491, 500 (1923), Mr. Justice Brandeis said:

> "The objection that a bill does not make a case properly cognizable in a court of equity does not go to its jurisdiction as a federal court (citations omitted). The objection may * * * be taken by the court of its

> own motion. But, unlike lack of jurisdiction as a federal court, (citations omitted) lack of equity jurisdiction (if not objected to by a defendant) may be ignored by the court, in cases where the subject matter of the suit is of a class of which equity has jurisdiction."

Mr. Justice Stone said in *DiGiovanni* v. *Camden Fire Insurance Assoc.*, 296 U.S. 64, 69 (1935):

> "Whether a suitor is entitled to equitable relief in the federal courts, other jurisdictional requirements being satisfied, is strictly not a question of jurisdiction in the sense of the power of a federal court to act. It is a question only of the merits; whether the case is one for the peculiar type of relief which a court of equity is competent to give."

Whether "jurisdiction" in Section 4 means equity jurisdiction or jurisdiction over the subject matter has been fully considered by Professor Chafee, *Some Problems of Equity*, Chapters 8 and 9 (1950). In commenting on congressional limitation on federal judicial power by the Norris-La Guardia Act, Professor Chafee said:

> "Everybody in this four-sided row among the Justices took it for granted that 'no court * * * shall have jurisdiction * * *' meant 'no court shall have power * * *' yet clearly the District Judge had jurisdiction over the parties, and * * * he also had jurisdiction over the subject matter. The District Court did have power to decide labor disputes, and it could at least award damages for acts which, the statute said, were not to be enjoined. This being so, nothing further was required to give that Court power to act, which includes power to act wrongly * * *. In short, the [Norris-La Guardia] Act says, in effect, 'no court shall have equity jurisdiction * * *', and lack of equity jurisdiction * * * is not lack of power." (Page 368).

Under Section 7 of the Norris-La Guardia Act, Federal Courts may grant injunctions under certain enumerated circumstances. Professor Chafee cogently argued that if Federal Courts have no subject matter jurisdiction, then how can the Court sit without jurdisdiction until certain facts are proved and then decide whether it has the power to act? The answer is, jurisdiction attaches from the beginning or not at all.

The strike against Avco gave rise to a single cause of action for which any number of different remedies were available. See *American Fire & Casualty Co.* v. *Finn,* 341 U.S. 6 (1951), where the Supreme Court defined cause of action as being predicated on a single wrong to plaintiff for which relief is sought. While the injunctive remedy has played an important part in the history of labor law, such close relationship between this effective remedy and the cause of action does not mean the two are coextensive. Here the complaint stated a single cause of action. The relief prayed for was an injunction and general relief. If Avco had not asked for general relief, it would have been entitled to any appropriate relief, other than an injunction, under Rule 54(c), Federal Rules of Civil Procedure.[2] Under the Rules of Civil Procedure, federal courts in their discretion may grant relief of a kind not requested in the

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[2] Rule 54(c), Rules of Civil Procedure. Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

pleading of either party. *Mercury Oil Refining Co.* v. *Oil Workers Int. Union, CIO,* 187 F.2 980.

In *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195 (1962), the Supreme Court held that Section 301 had not so narrowed the provision of Section 4 as to permit injunctions growing out of a labor dispute. The Court dismissed the count requesting an injunction, and the District Court, having jurisdiction over the parties and the subject matter, was free to go to trial on the merits of the count requesting damages.

While *Sinclair* v. *Atkinson, supra,* rests on plain language and legislative purpose, the Court said, at page 303:

> "* * * Section 301 was not intended to have any such partially repealing effect upon such a long-standing, carefully thought out and highly significant part of this country's labor legislation as the Norris-La Guardia Act."

Though Section 4 specifically applies only to Federal Courts, there was, nevertheless, a clear declaration of congressional policy against enjoining peaceful picketing which we must now follow and apply as part of Federal labor law.[3] The effect of Section 4 was not to authorize State Courts to grant injunctive relief, they already had that power. However, the substantive powers of the States to determine labor law and labor policy in labor disputes arising out of collective bargaining agreements in indus-

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[3] An employer may obtain an order directing a Union to comply with its agreement to arbitrate. A strike in the face of such an order could result in contempt proceedings. This alternative remedy is referred to in *Sinclair Refining Co.* v. *Atkinson, supra,* page 214 and page 227, Fn. 23.

tries affecting interstate commerce has now been taken away by Federal law.

Federal Courts are solely responsible for developing a single, consistent body of Federal labor law. The Supreme Court said in *Teamsters Local 174* v. *Lucas Flour Co., supra,* page 103:

> "More important, the subject matter of § 301(a) 'is peculiarly one that calls for uniform law.' (Citations omitted). The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation."

If remand is granted, State Courts would become the preferred forum for adjusting breaches of no-strike clauses in collective bargaining agreements in industries affecting interstate commerce. Not only would this undermine a uniform development of the law, but the availability and effectiveness of the injunctive remedy would vary from State to State. Consequently, in order to achieve this uniformity of application, the remedies available in State Courts are limited to the remedies available under Federal law.

Avco's claim arises under the laws of the United States, and the complaint states an action over which the District Court had original jurisdiction. Federal labor policy must have uniform application. The Congress has declared that injunctions shall not issue to restrain peaceful picketing.

The judgment of the District Court denying the motion to remand is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17,207

AVCO CORPORATION,
Plaintiff-Appellant,

vs.

AERO LODGE No. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ET AL.,
Defendants-Appellees.

Before EDWARDS and CELEBREZZE, *Circuit Judges,* and BATTISTI, *District Judge.*

JUDGMENT.

APPEAL from the United States District Court for the Middle District of Tennessee.

This Cause came on to be heard on the record from the United States District Court for the Middle District of Tennessee and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.
Carl W. Reuss
Clerk

A True Copy.
Attest:

_____
Carl W. Reuss, Clerk

Issued as Mandate:
COSTS: NONE

Filing fee ..... $_____

Printing ..... $_____

_____

Total ..... $_____